

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT BARTLETT and U.S. POSTAL SERVICE,
EAST MAIN STREET POST OFFICE, Marlton, NJ

*Docket No. 99-2023; Submitted on the Record;
Issued September 15, 2000*

DECISION and ORDER

Before MICHAEL E. GROOM, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has established that he sustained an emotional condition in the performance of duty on or before June 23, 1997 as alleged.

On September 30, 1997 appellant, then a 48-year-old letter carrier, claimed that he sustained a stress disorder due to harassment at work from July 1993 to June 23, 1997.¹ The October 23, 1997 report of Dr. Andrew F. Jensen, an attending clinical psychologist, described incidents, which appellant related to him as “stress provoking and possibly harassing,” including being “forced to work overtime” and being “subjected to comments made about his experiences as a Vietnam combat veteran. Even when he sought help to reduce his level of stress, he would often be prevented from seeing his physician by being assigned overtime.” Dr. Jensen diagnosed severe post-traumatic stress disorder attributable in part to the described factors of appellant’s employment.

The Office denied appellant’s claim in a May 15, 1998 decision, finding that he had alleged compensable but “unverified” factors of employment, including that supervisors made negative

¹ Appellant was diagnosed with post-traumatic stress disorder, related to his combat experiences in Vietnam and participated in regularly scheduled prescribed therapy sessions. Appellant participated in 80 to 100 combat missions and was awarded the Purple Heart and four other medals.

comments about his service in Vietnam and that forced overtime caused him stress and prevented him from attending therapy sessions for post-traumatic stress disorder.²

At a January 12, 1999 hearing,³ appellant stated that he was required to work overtime beginning in July 1996, averaging 50 to 56 total hours per week and that this caused him great emotional stress. After a family medical emergency on December 7, 1996, he informed the employing establishment that he did not want overtime work. However, the required overtime continued, causing appellant to miss his twice-weekly psychotherapy appointments.

Appellant submitted evidence corroborating his account of overtime work. In a May 15, 1998 letter, Mr. Francis X. Murphy, the postmaster from September 1996 to 1997, stated that appellant was required to “work overtime when his services were” needed. “If the mail volume was heavy and we were short staffed the mail had to be delivered [and] he would have to work.”

Appellant also submitted factual evidence corroborating that a supervisor was verbally abusive about his military service in Vietnam. In a March 8, 1999 statement, Mary E. Dixon, a coworker whose mail case adjoined appellant’s, related that on an unspecified date, Frank Rozniakowski approached appellant and said “So Bob what did you do in Vietnam just shoot everybody, women and kids too?”

By decision dated and finalized March 18, 1999, the Office hearing representative affirmed the Office’s May 15, 1998 decision, finding that appellant had failed to establish a compensable factor of employment. The hearing representative found that the overtime work assignments were administrative matters not within the coverage of the Federal Employees’ Compensation Act. The hearing representative further found that although appellant had established that Mr. Rozniakowski made a disparaging remark about appellant’s military service, that appellant did not allege that such remark caused or contributed to his claimed emotional condition.

Where a claimed disability results from an employee’s emotional reaction to his regular or specially assigned duties or to an imposed employment requirement, the disability comes

² Appellant also alleged that supervisors forced him to work unnecessarily in uncomfortably close proximity to other employees. In a May 15, 1998 letter, Francis X. Murphy, the employing establishment postmaster from September 1996 to 1997, explained that “router assistance,” in which two carriers work the same mail case, was a daily occurrence at the employing establishment and was a common postal practice. The Board finds that appellant did not provide corroborating evidence establishing this as a compensable factor of employment. Appellant also alleged that he was under unfair scrutiny by employing establishment supervisors, but did not submit evidence corroborating any error or abuse. In a March 18, 1999 statement, Joe Walder, appellant’s union steward, opined that the employing establishment’s management “had their sights set to discipline [appellant] every opportunity they could,” including imposing suspensions in February, April and May 1997 that were later rescinded after appellant filed grievances and posting supervisors at appellant’s mail case and on his route. However, the Board has held that mere perceptions of harassment are not compensable under the Act; *see Lorraine E. Schroeder*, 44 ECAB 323 (1992); *William P. George*, 43 ECAB 1159 (1992). The Board has also held that reduction of a disciplinary penalty does not establish employing establishment error or abuse. *Sherry L. McFall*, 51 ECAB ____ (issued April 3, 2000); *Garry M. Carlo*, 47 ECAB 299 (1996).

³ On May 21, 1998 appellant, through his attorney, requested an oral hearing before a representative of the Office’s Branch of Hearings and Review. The hearing was held on January 12, 1999.

within the coverage of the Act.⁴ When working conditions are alleged as factors in causing an emotional condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁵ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Where the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁶

The hearing representative found that appellant had established that Mr. Rozniakowski made a disparaging remark about appellant's military service, but that appellant did not allege that such remark caused or contributed to his claimed emotional condition. This finding is in error, as Dr. Jensen's October 23, 1997 report indicates that appellant related to him as stressful being subjected to comments made about his experiences as a Vietnam combat veteran while at work.

The hearing representative also found that the assignment of required overtime work was an administrative matter not under coverage of the Act. This finding is also in error, as the Board has held that an employee's emotional reaction to overwork may be a compensable factor of employment.⁷ Appellant stated at the January 12, 1999 hearing that he experienced emotional distress due to overwork from required overtime assignments beginning in July 1996, which averaged 50 to 56 total hours per week and prevented him from attending prescribed psychotherapy sessions. Appellant submitted evidence from Mr. Murphy, the postmaster from September 1996 to 1997, who stated in a May 15, 1998 letter that appellant was required to work overtime when his services were needed because the office was short staffed. Further, Dr. Jensen's October 23, 1997 report indicated that the required overtime affected appellant's emotional condition.

Thus, appellant has established the compensable employment factors of verbal abuse and overwork. The case will be remanded to the Office for further development. The Office should develop the medical record to determine whether the employment factors of overwork and verbal abuse aggravated or contributed to appellant's emotional condition and if so, any period of disability resting therefrom.

⁴ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Garry M. Carlo*, 47 ECAB 299, 305, *supra* note 2.

⁶ *Id.*

⁷ *Sandra F. Powell*, 45 ECAB 877 (1994); *Frank A. McDowell* 44 ECAB 522 (1993), *William P. George*, 43 ECAB 1159 (1992); *Georgia F. Kennedy*, 35 ECAB 1151 (1984).

The decision of the Office of Workers' Compensation Programs dated and finalized March 18, 1999 is hereby set aside and the case remanded for further development consistent with this decision and order.

Dated, Washington, DC
September 15, 2000

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member